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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,186	11/25/2003	Richard Liddy	81087759	1185

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EXAMINER

MASKULINSKI, MICHAEL C

ART UNIT	PAPER NUMBER
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2113

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/707,186

Applicant(s)

LIDDY ET AL.

Examiner

Michael C. Maskulinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1-4, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 5-15, 18 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Final Office Action

Response to Amendment

1. The Affidavit filed on December 1, 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Chandler et al. reference.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Chandler et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

In the Applicant's Affidavit, conception has been shown by an e-mail dated March 17, 2003. In this e-mail, there is a drafted claim. The limitations in that claim and claim 1 of the instant application are not the same. In other words, the claim in the e-mail dated March 17, 2003 does not contain the limitations of displaying with a graphical user interface used by a computer a sequential order of completion of steps for a number of graphical representations which are to be completed by an FMEA analyst and received by the graphical user interface in sequential order to facilitate generating the FMEA form; and receiving the graphical representations according to the sequential order of completion, wherein receiving the graphical representations comprises receiving a pictorial diagram of component interactions for one or more components comprising the system such that a visual display of the component interactions is

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received to facilitate generating the FMEA form, and wherein a first graphical representation is received and each subsequently received graphical representation is completed based in part upon the visual display provided by the first graphical representation such that each graphical representation builds upon the first graphical representation to facilitate generating the FMEA form. The document dated March 17, 2003 doesn't even mention a graphical user interface or graphical representations. For at least these reasons, it is believed that the Applicant never conceived of the idea before June 18, 2003. Further evidence of conception is required in the Applicant's next response.

3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Chandler et al. reference to either a constructive reduction to practice or an actual reduction to practice. The Applicant has to show diligence from the critical date of June 18, 2003 to the constructive reduction of practice, which would be the filing date of the application. To be more specific, there are three periods of time that have to be accounted for.

The first period, is as follows. In the Applicant's Affidavit, the first document showing diligence is an e-mail dated July 5, 2003 with a first draft of the application. The period between just prior to June 18, 2003 (critical date) and this date has to be accounted for. That means there has to be supporting evidence explaining what was being done every day between June 18, 2003 and July 5, 2003.

The second period is as follows. The next document showing diligence is an e-mail dated July 16, 2003 with a final draft of the application. In it is a statement saying

that the application will be filed one week from today-July 23. Then the next document is an e-mail from September 29, 2003 asking for the Applicants signatures on the declaration and the final specification and drawings. Although there may be extraneous circumstances as to why there was nothing being done between July 23 and September 29, it still needs to be explained and supported with evidence.

The third period is between September 29, 2003 and October 20, 2003. The October 20, 2003 document is a follow-up e-mail to the September 29, 2003 e-mail asking again for signatures on the declaration. In the Office's eyes, three weeks is a very long time for nothing to have been done, and, therefore, this period also needs to be explained and supported with evidence.

The Examiner would like to note that there are other gaps in the period of time between June 18, 2003 and the filing date of the Application, and if there is any documentation or evidence that has not been submitted, it should be submitted in the next response. Also, the three periods mentioned above have to be accounted for.

The Examiner would like to note that the Affidavit is also improper because it has to include a statement saying that the work done on the invention was done in a NAFTA or WTO country.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 2, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Chandler et al., US 2004/0256718 A1.

Referring to claim 1:

- a. In paragraph 0009, Chandler et al. disclose providing a method for facilitating Human Factors Failure Modes and Effects analysis (A computer-implemented method to facilitate failure modes and effects analysis (FMEA) of one or more components of a system, wherein an FMEA form is generated to indicate the FMEA).
- b. In paragraph 0021, Chandler et al. disclose guiding the user through a step-by-step HF PFMEA and human error risk assessment and that the tool can be configured to provide warnings when necessary data is not available to continue (displaying with a graphical user interface used by a computer a sequential order of completion of steps for a number of graphical representations which are to be completed by an FMEA analyst and received by the graphical user interface in sequential order to facilitate generating the FMEA form).
- c. In paragraph 0025, Chandler et al. disclose that software control buttons allow the user to move between phases of the software tool, such as by allowing the user to move between the HF PFMEA process phases and the table and report (FIG. 1) which are generated by the process. Thus, as a user makes changes in the process, the user can monitor effects of the changes in the outputs of the process. Similarly, after the outputs have been generated, if the user should need to make changes in the process, the user can easily return to the process to effect those changes (and receiving the graphical representations according to the sequential order of completion, wherein receiving the graphical

representations comprises receiving a pictorial diagram of component interactions for one or more components comprising the system such that a visual display of the component interactions is received to facilitate generating the FMEA form, and wherein a first graphical representation is received and each subsequently received graphical representation is completed based in part upon the visual display provided by the first graphical representation such that each graphical representation builds upon the first graphical representation to facilitate generating the FMEA form).

Referring to claim 2, in paragraph 0048, Chandler et al. disclose that upon completing phases of the analysis, the user can employ a task tree component to review the phases of the analysis component (displaying a process indicator to indicate completion of each graphical representation in the sequential order, wherein the process indicator tracks receipt of each graphical representation for use in indicating completion of the graphical representation).

Referring to claim 17:

- a. In paragraph 0009, Chandler et al. disclose providing a method for facilitating Human Factors Failure Modes and Effects analysis (A computer-implemented method to facilitate failure modes and effects analysis (FMEA) of one or more components of a system, wherein an FMEA form is generated to indicate the FMEA).
- b. In paragraph 0021, Chandler et al. disclose guiding the user through a step-by-step HF PFMEA and human error risk assessment and that the tool can

be configured to provide warnings when necessary data is not available to continue (displaying with a graphical user interface used by a computer a sequential order of completion of steps which are to be completed by an FMEA analyst in sequential order to facilitate generating the FMEA form).

- c. In paragraph 0025, Chandler et al. disclose that software control buttons allow the user to move between phases of the software tool, such as by allowing the user to move between the HF PFMEA process phases and the table and report (FIG. 1) which are generated by the process. Thus, as a user makes changes in the process, the user can monitor effects of the changes in the outputs of the process. Similarly, after the outputs have been generated, if the user should need to make changes in the process, the user can easily return to the process to effect those changes (completing the steps in sequential order).
- d. In paragraph 0049, Chandler et al. disclose that a final table and text report are generated (and generating the FMEA form upon completion of a last step).

Referring to claim 19:

- a. In paragraph 0009, Chandler et al. disclose providing a method for facilitating Human Factors Failure Modes and Effects analysis (A computer-implemented method to facilitate failure modes and effects analysis (FMEA) of one or more components of a system, wherein an FMEA form is generated to indicate the FMEA).

b. In paragraph 0021, Chandler et al. disclose guiding the user through a step-by-step HF PFMEA and human error risk assessment and that the tool can be configured to provide warnings when necessary data is not available to continue (display a sequential order of completion of steps for a number of graphical representations of component interactions which are to be completed by an FMEA analyst and received by the graphical user interface in sequential order to facilitate generating the FMEA form).

c. In paragraph 0025, Chandler et al. disclose that software control buttons allow the user to move between phases of the software tool, such as by allowing the user to move between the HF PFMEA process phases and the table and report (FIG. 1) which are generated by the process. Thus, as a user makes changes in the process, the user can monitor effects of the changes in the outputs of the process. Similarly, after the outputs have been generated, if the user should need to make changes in the process, the user can easily return to the process to effect those changes (and indicate whether the graphical representations are received according to the sequential order of completion).

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chandler et al., US 2004/0256718 A1, and further in view of Advanced Failure Modes and Effects Analysis of Complex Processes, by Kmenta et al.

Referring to claim 3, in paragraph 0041, Chandler et al. disclose performing a barriers and controls identification. However, Chandler et al. don't explicitly disclose receiving a boundary diagram to pictorially diagram the component interactions of the components comprising the system such that the boundary diagram facilitates generating the FMEA form, wherein the boundary diagram identifies physical and non-physical interactions between the components comprising the system. On page 4, Kmenta et al. disclose defining a boundary to a process when building a behavior model. It would have been obvious to one of ordinary skill at the time of the invention to include the boundary diagram of Kmenta et al. into the system of Chandler et al. A person of ordinary skill in the art would have been motivated to make the modification because on page 8, under section 6.0 Conclusions and Future Work, Kmenta et al. disclose linking AFMEA with human error proofing, which is the object of the invention of Chandler et al.

Referring to claim 4, on page 3, in Table 2, Kmenta et al. disclose a conceptual layout design of power plant hardware including components, their names, and relationships between the components shown with lines. Further, on page 8, under section 6.0 Conclusions and Future Work, Kmenta et al. disclose that the method lends itself to automation as a product development tool (receiving textual inputs naming each one of the components comprising the system and graphically displaying the names with an interaction of the components, wherein the interaction is graphically displayed by drawing an interaction line between each component to pictorially diagram the system interactions).

Allowable Subject Matter

8. Claims 5-15, 18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 16 is allowed.

Conclusion

10. This is a Request for Continued Examination of applicant's earlier Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is 571-272-3649. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski
Examiner
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